

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3885 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

BALUBHAI ALIAS BIPINCHANDRA GOVINDBHAI PATEL

Versus

ADDITIONAL CHIEF SECRETARY

Appearance:

Mr. Z.F. Bharda for MR PB MAJMUDAR for Petitioner
Mr. Nigam Shukla, learned counsel for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 02/11/96

ORAL JUDGMENT :

1. This Special Civil Application is directed against the order dated 26-4-96 passed by the Police Commissioner, Surat City whereby the petitioner has been detained under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order was executed on 27-4-96 and since then the petitioner is under detention

lodged at District Jail, Bhavnagar.

2. The present Special Civil Application was filed in this court on 4-6-96 and on 5-6-96 rule returnable on 24-6-96 was issued. So far neither any reply has been filed on behalf of the respondents nor any affidavit of the detaining authority has been filed.

3. The grounds enclosed with the detention order show that 2 criminal cases under the Bombay Prohibition Act were registered against the petitioner and the detaining authority after noticing the allegations of these two criminal cases has taken into consideration the statements of 3 witnesses with regard to the incidents dated 7-3-96, 8-3-96 and 31-3-96. The witnesses have stated about the petitioner's anti social and criminal activities and that the petitioner is engaged in the business of sale of unauthorised liquor and used deadly weapons like sword against the witnesses. He has been beating the witnesses who do not co-operate with him in the business of his unauthorised liquor. The petitioner has created an atmosphere of terror and the daily routine life of the people has been disturbed. The witnesses have requested that their identity be kept secret for their security and the detaining authority has found that the petitioner is a bootlegger and is engaged in anti social activities. It has been opined that it was necessary to detain the petitioner so as to prevent him from continuing with his anti social activities. Accordingly the detention order was passed.

4. The detention order has been challenged on more than one grounds by the learned counsel for the petitioner, but at the time of arguments stress has been laid on the ground that the allegations and materials relied upon against the petitioner, even if taken to be true, do not constitute a case of breach of public order and it is at the most a case of breach of law and order.

5. The reasonings in the Judgment dated 4-10-96 rendered by this Court in Special Civil Application No.3879/96 apply with full force to the facts of this case and I am inclined to hold that in this case the detention order has been passed not for reasons germane to the public order but for grounds of breach of law and order and, therefore, the detention order can not be sustained in the eye of law.

6. Accordingly the Special Civil Application is allowed and the impugned detention order dated 26-4-96 passed by the Police Commissioner, Surat City is hereby

quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.

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